

paid-in surplus or as a contribution to capital, or to a foreign estate or trust, or to a foreign partnership, an excise tax equal to 35 percent of the excess of—

(1) the fair market value of the property so transferred, over

(2) the sum of—

(A) the adjusted basis (for determining gain) of such property in the hands of the transferor, plus

(B) the amount of the gain recognized to the transferor at the time of the transfer.

(Aug. 16, 1954, ch. 736, 68A Stat. 365; Oct. 4, 1976, Pub. L. 94-455, title X, §1015(a), 90 Stat. 1617; Nov. 6, 1978, Pub. L. 95-600, title VII, §701(u)(14)(A), 92 Stat. 2919.)

#### AMENDMENTS

1978—Pub. L. 95-600 substituted “estate or trust” for “trust” wherever appearing.

1976—Pub. L. 94-455 substituted in provisions preceding par. (1) “property” for “stocks and securities” and “35 percent” for “27½ percent” and in par. (1) “fair market value” for “value” and “property” for “stocks and securities” and in par. (2) designated existing provisions as subpar. (A) and added subpar. (B).

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(14)(C) of Pub. L. 95-600 provided that: “The amendments made by this paragraph [amending this section and section 1492 of this title] shall apply to transfers after October 2, 1975.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 1015(d) of Pub. L. 94-455 provided that: “The amendments made by this section [enacting section 1057 of this title, amending this section and section 1492 of this title, and renumbering former section 1057 as 1058 of this title] shall apply to transfers of property after October 2, 1975.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 814, 1492, 1494 of this title.

### § 1492. Nontaxable transfers

The tax imposed by section 1491 shall not apply—

(1) If the transferee is an organization exempt from income tax under part I of subchapter F of chapter 1 (other than an organization described in section 401(a)); or

(2) To a transfer—

(A) described in section 367, or

(B) not described in section 367 but with respect to which the taxpayer elects (before the transfer) the application of principles similar to the principles of section 367, or

(3) To a transfer for which an election has been made under section 1057.

(Aug. 16, 1954, ch. 736, 68A Stat. 365; Jan. 12, 1971, Pub. L. 91-681, §1(b), 84 Stat. 2066; Oct. 4, 1976, Pub. L. 94-455, title X, §1015(b), title XIX, §1906(b)(13)(A), 90 Stat. 1618, 1834; Nov. 6, 1978, Pub. L. 95-600, title VII, §701(u)(14)(B), 92 Stat. 2919; July 18, 1984, Pub. L. 98-369, div. A, title I, §131(f)(1), 98 Stat. 665.)

#### AMENDMENTS

1984—Pars. (2) to (4). Pub. L. 98-369 substituted provision that the tax imposed by section 1491 not apply to a transfer described in 367 or if not described in section

367 but with respect to which the taxpayer elects, before the transfer, the application of principles similar to the principles of section 367 for provision that such tax not apply if before the transfer it has been established to the satisfaction of the Secretary that such transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax in par. (2), struck out par. (3), which provided that the tax imposed by section 1491 not apply to a transfer described in section 367, and redesignated par. (4) as (3).

1978—Par. (3). Pub. L. 95-600 substituted “To a transfer described in section 367; or” for “To a transfer to which section 367 applies; or”.

1976—Par. (2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Par. (3). Pub. L. 94-455, §1015(b)(1), substituted “section 367 applies; or” for “section 367(d) applies.”.

Par. (4). Pub. L. 94-455, §1015(b)(2), added par. (4).

1971—Par. (3). Pub. L. 91-681 added par. (3).

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as a note under section 367 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to transfers after Oct. 2, 1975, see section 701(u)(14)(C) of Pub. L. 95-600, set out as a note under section 1491 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1015(b) of Pub. L. 94-455 applicable to transfers of property after Oct. 2, 1975, see section 1015(d) of Pub. L. 94-455, set out as a note under section 1491 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91-681 applicable with respect to transfers made after Dec. 31, 1970, see section 1(c) of Pub. L. 91-681, set out as a note under section 367 of this title.

### § 1493. Repealed. Pub. L. 89-809, title I, § 103(l)(2), Nov. 13, 1966, 80 Stat. 1554]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 365, defined foreign trust.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89-809, set out as an Effective Date of 1966 Amendment note under section 871 of this title.

### § 1494. Payment and collection

#### (a) Time for payment

The tax imposed by section 1491 shall, without assessment or notice and demand, be due and payable by the transferor at the time of the transfer, and shall be assessed, collected, and paid under regulations prescribed by the Secretary.

#### (b) Abatement or refund

Under regulations prescribed by the Secretary, the tax may be abated, remitted, or refunded if the taxpayer, after the transfer, elects the application of principles similar to the principles of section 367.

(Aug. 16, 1954, ch. 736, 68A Stat. 365; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b)(13)(A), 90 Stat. 1834; July 18, 1984, Pub. L. 98-369, div. A, title I, §131(f)(2), 98 Stat. 665.)

## AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted “the taxpayer, after the transfer, elects the application of principles similar to the principles of section 367” for “after the transfer it has been established to the satisfaction of the Secretary that such transfer was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes”.

1976—Subsecs. (a), (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as a note under section 367 of this title.

## CROSS REFERENCES

Confidentiality and disclosure of returns and return information, see section 6103 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6422 of this title.

**CHAPTER 6—CONSOLIDATED RETURNS**

Subchapter	Sec. <sup>1</sup>
A. Returns and Payment of Tax .....	1501
B. Related Rules .....	1551

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 953, 6012, 6103, 7851 of this title.

**Subchapter A—Returns and Payment of Tax**

Sec.	
1501.	Privilege to file consolidated returns.
1502.	Regulations.
1503.	Computation and payment of tax.
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1505.	Cross references.

**§ 1501. Privilege to file consolidated returns**

An affiliated group of corporations shall, subject to the provisions of this chapter, have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(Aug. 16, 1954, ch. 736, 68A Stat. 367.)

## CROSS REFERENCES

Definition of personal holding company, see section 542 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 172, 542, 818, 832, 963, 1092, 7701 of this title.

<sup>1</sup> Section numbers editorially supplied.

**§ 1502. Regulations**

The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(Aug. 16, 1954, ch. 736, 68A Stat. 367; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b) (13)(A), 90 Stat. 1834.)

## AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

## DUAL RESIDENT COMPANIES

Pub. L. 100-647, title VI, § 6126, Nov. 10, 1988, 102 Stat. 3713, provided that:

“(a) GENERAL RULE.—In the case of a transaction which—

“(1) involves the transfer after the date of the enactment of this Act [Nov. 10, 1988] by a domestic corporation, with respect to which there is a qualified excess loss account, of its assets and liabilities to a foreign corporation in exchange for all of the stock of such foreign corporation, followed by the complete liquidation of the domestic corporation into the common parent, and

“(2) qualifies, pursuant to Revenue Ruling 87-27, as a reorganization which is described in section 368(a)(1)(F) of the 1986 Code,

then, solely for purposes of applying Treasury Regulation section 1.1502-19 to such qualified excess loss account, such foreign corporation shall be treated as a domestic corporation in determining whether such foreign corporation is a member of the affiliated group of the common parent.

“(b) TREATMENT OF INCOME OF NEW FOREIGN CORPORATION.—

“(1) IN GENERAL.—In any case to which subsection (a) applies, for purposes of the 1986 Code—

“(A) the source and character of any item of income of the foreign corporation referred to in subsection (a) shall be determined as if such foreign corporation were a domestic corporation,

“(B) the net amount of any such income shall be treated as subpart F income (without regard to section 952(c) of the 1986 Code), and

“(C) the amount in the qualified excess loss account referred to in subsection (a) shall—

“(i) be reduced by the net amount of any such income, and

“(ii) be increased by the amount of any such income distributed directly or indirectly to the common parent described in subsection (a).

“(2) LIMITATION.—Paragraph (1) shall apply to any item of income only to the extent that the net amount of such income does not exceed the amount in the qualified excess loss account after being reduced under paragraph (1)(C) for prior income.

“(3) BASIS ADJUSTMENTS NOT APPLICABLE.—To the extent paragraph (1) applies to any item of income, there shall be no increase in basis under section 961(a) of such Code on account of such income (and there shall be no reduction in basis under section 961(b) of such Code on account of an exclusion attributable to the inclusion of such income).

“(4) RECOGNITION OF GAIN.—For purposes of paragraph (1), if the foreign corporation referred to in subsection (a) transfers any property acquired by